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UNLIMITED JURISDICTION  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

WILLIAM TAYLOR,

Plaintiff,

vs.

CITY OF BURBANK and DOES 1 through  
100, inclusive,

Defendants.

CASE NO. BC 422 252

[Assigned to John Shepard Wiley, Jr.  
Judge, Dept. 50]

SEPARATE STATEMENT OF FORM  
INTERROGATORIES-EMPLOYMENT  
LAW AND RESPONSES IN DISPUTE

[FILED AND SERVED  
CONCURRENTLY WITH MOTION  
FOR DISCOVERY OF PEACE OFFICER  
PERSONNEL AND TO COMPEL  
FURTHER RESPONSES TO  
INTERROGATORIES AND REQUEST  
FOR PRODUCTION]

Date: April 22, 2010  
Time: 8:30 a.m.  
Dept.: 50

Action Filed: September 22, 2009  
FSC: November 5, 2010  
Trial: November 16, 2010

3-5-10

1 **TO THE COURT, ALL PARTIES, AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that Plaintiff William Taylor hereby provides the following  
3 separate statement of form interrogatories and responses in dispute, and the reasons why  
4 further responses should be compelled.  
5

6 **FORM INTERROGATORY NO. 201.3:**

7  
8 Were there any other **ADVERSE EMPLOYMENT ACTIONS**, including (the asking  
9 party should list the **ADVERSE EMPLOYMENT ACTIONS**): **DEMOTION TO CAPTAIN**

10 If so, for each action, provide the following:

- 11 (a) all reasons for each **ADVERSE EMPLOYMENT ACTION**;
- 12 (b) the name, **ADDRESS**, and telephone number of each **PERSON** who  
13 participated in making each **ADVERSE EMPLOYMENT ACTION** decision;
- 14 (c) the name, **ADDRESS**, and telephone number of each **PERSON** who  
15 provided any information relied upon in making each **ADVERSE**  
16 **EMPLOYMENT ACTION** decision; and
- 17 (d) the identity of all **DOCUMENTS** relied upon in making each **ADVERSE**  
18 **EMPLOYMENT ACTION** decision.  
19  
20

21 **RESPONSE TO FORM INTERROGATORY NO. 201.3:**

22 City objects to this interrogatory on the grounds that it is misleading and assumes  
23 facts in listing a "demotion to Captain," as at all relevant times, plaintiff was a Captain with  
24 the Burbank Police Department and was never demoted to that rank. Moreover, to the  
25 extent that plaintiff intends to refer to the elimination of the assignment for a Captain to  
26 serve in the capacity of a Deputy Chief, City objects that this is a misleading use of a  
27  
28

1 special definition of the phrase "ADVERSE EMPLOYMENT ACTION" that conflicts with  
2 the legal definition of that term. City further objects to this interrogatory to the extent it  
3 calls for information which is privileged or otherwise protected from disclosure by Penal  
4 Code §832.7 and Evidence Code §1043. Notwithstanding, but subject to the foregoing  
5 objections, City responds as follows on information and belief:

6  
7 No. There was no Adverse Employment Action against plaintiff, nor was plaintiff  
8 demoted to Captain.

9 To the extent that this interrogatory is intended to simply ask about the elimination  
10 of the assignment for a Captain to serve in the capacity of Deputy Chief, City responds as  
11 follows:

12 (a-b) Plaintiff was not demoted from Deputy Chief to Captain. At all relevant  
13 times, plaintiff has held the position of Captain. There is no Deputy Chief position or  
14 classification in the Burbank Police Department. The Chief of Police has been authorized  
15 to designate one of his captains to serve an assignment in the capacity of a Deputy Police  
16 Chief. Plaintiff, as a captain, served in that assigned capacity from approximately August  
17 2007 until approximately May 2009. The captain serving in the assigned capacity of  
18 Deputy Police Chief was tasked with day-to-day oversight of the Department's operations  
19 and to train and mentor new Captains. This assignment was created under a previous  
20 administration.  
21

22  
23 In May 2009, Chief of Police Tim Stehr decided to restructure the Police  
24 Department. He did not believe that there was a pressing need for the role of the  
25 Captain serving in the capacity of Deputy Chief, and he wanted to have more direct  
26 control and contact within the Department. Therefore, he eliminated the  
27 assignment of having a Captain serve in the capacity of Deputy Police Chief and re-  
28

1 assigned plaintiff as the Captain in command of the Investigations Division.

2 Part of Chief Stehr's decision to restructure was based upon a loss of  
3 confidence in plaintiff's ability to fulfill the tasks given to the Captain with the  
4 Deputy Chief assignment. The most serious contributing factor was that Chief  
5 Stehr had received allegations of impropriety concerning plaintiff, including that  
6 plaintiff had improperly interfered in an attempted to influence an internal  
7 investigation. As the Captain with the Deputy Chief assignment, plaintiff oversaw  
8 internal affairs investigations conducted by the Department, which oversight was  
9 not appropriate given the allegations against plaintiff.  
10

11 (c) The following witnesses were aware of the reasons for the restructuring:  
12 Plaintiff, Chief of Police Tim Stehr and his Command Staff, all members of the Department  
13 who received the Chief's Daily Bulletin on the restructuring, Elizabeth J. Gibbons, City  
14 Manager Mike Flad. **Witness information gathered or generated during the**  
15 **investigation into alleged improprieties by plaintiff, which is ongoing and as such**  
16 **remains confidential and privileged, will be provided when and if they are**  
17 **discoverable.**  
18

19 (d) The following documents relate to the restructuring: May 14, 2009 and letter  
20 from Juli C. Scott to Elizabeth J. Gibbons and documents referred to therein; Burbank  
21 Police Daily Bulletin dated May 4, 2009; City of Burbank, Management Services Division,  
22 Personnel Action Forms as to plaintiff, 2007 through 2009, and other miscellaneous  
23 Human Resources, personnel and payroll documents. **Documents gathered or**  
24 **generated during the investigation into alleged improprieties by plaintiff, which is**  
25 **ongoing and as such remains confidential and privileged, will be provided when**  
26 **and if they are discoverable. (Emphasis added.)**  
27  
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1 **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED:**

2 It is clear from defendant's response that defendant relies upon "witness  
3 information and documents gathered or generated during the investigation into alleged  
4 improprieties by plaintiff" in regard to the alleged reasons for its demotion of plaintiff from  
5 Deputy Chief to Captain. Indeed, defendant claims that the "the most serious contributing  
6 factor" relied upon by defendant in demoting plaintiff was the alleged improprieties of  
7 plaintiff which are the subject of these alleged confidential investigations. Defendant  
8 cannot have its cake and eat it too. Plaintiff is entitled to be apprised by defendant under  
9 oath of all facts, witnesses, and documents that defendant claims allegedly support its  
10 contentions in this matter so that plaintiff may rebut same and demonstrate that such  
11 alleged reasons are false, pretextual, and a sham, and that the real reason for the  
12 demotion and other adverse employment actions taken against plaintiff was retaliation by  
13 defendant for plaintiff engaging in activities protected by *Labor Code* Section 1102.5 and  
14 FEHA.  
15

16  
17 The *McDonnell Douglas* burden-shifting framework applies in FEHA retaliation  
18 cases as well as discrimination cases under both federal and state law. The same  
19 framework also applies to retaliation actions premised on violations of *Labor Code* Section  
20 1102.5. *Patten v. Grant Joint Union High School District* (2005) 134 Cal.App.4th 1378.  
21 Under this framework, a plaintiff is required to establish a prima facie case, which consists  
22 of showing that: a) plaintiff engaged in a protected activity; b) the employer subjected  
23 plaintiff to an adverse employment action; and c) a causal link exists between the  
24 protected activity and the employer's action. *Passantino v. Johnson & Johnson Consumer*  
25 *Products, Inc.* (9th Cir. 2000) 212 F.3d 493, 506 (under Title VII); *Yanowitz v. L'Oreal*  
26 *USA, Inc.* (2005) 36 Cal.4th 1028, 1044, 32 Cal.Rptr.3d 436, 446 (under FEHA).  
27  
28

1 The causal link may be based solely on the timing of the relevant actions:  
2 "Specifically, when adverse employment decisions are taken within a reasonable period of  
3 time after complaints of discrimination have been made, retaliatory intent may be  
4 inferred." *Passantino v. Johnson & Johnson Consumer Products, Inc.* (9th Cir. 2000) 212  
5 F.3d 493, 507; *Mulhall v. Ashcroft, supra*, 287 F.3d at 551; *Mariani-Colon v. Department*  
6 *of Homeland Security ex rel. Chertoff* (1st Cir. 2007) 511 F.3d 216, 224 - temporal  
7 proximity (2 months) between protected activity and discharge sufficient for relatively light  
8 burden of establishing prima facie case of retaliation.  
9

10 Thus, the temporal relationship between engaging in the protected activity and a  
11 subsequent adverse employment action is circumstantial evidence of retaliation. *Flait v.*  
12 *North American Watch Company* (1992) 3 Cal.App.4th 467, 478 -479. A series of acts on  
13 the part of a defendant employer which proceed in linear fashion from whistleblower  
14 disclosures and culminating in adverse employment actions present a triable issue of  
15 material fact as to a "causal link" between the protected activity and the adverse  
16 employment action. *Patten v. Grant Joint Union High School District, supra*, 134  
17 Cal.App.4th at 1390. Here, the temporal and linear connection is both direct and obvious.  
18 Moreover, the relationship between plaintiff's whistleblowing activities and the adverse  
19 employment actions is sufficient by itself to provide circumstantial evidence of retaliation  
20 sufficient to establish a prima facie case. In *Colarossi v. Coty US Inc.* (2002) 97 Cal.  
21 App. 4<sup>th</sup> 1142, the court noted that "suspicious" timing of the employer's actions may  
22 provide the circumstantial link needed to infer that an improper purpose accounted for the  
23 adverse action. (*Id.* at 1154.) "The timing of the decision may have been coincidental, but  
24 when viewed as part of the mosaic of evidence" plaintiff presented, it will support the  
25 causal element of an employment claim. As stated in *Passantino v. Johnson & Johnson*  
26  
27  
28

1 *Consumer Prods., Inc.* (9<sup>th</sup> Cir 2000) 212 F.3d 493, 507: "[T]his close timing provides  
2 circumstantial evidence of retaliation that is sufficient to create a prima facie case of  
3 retaliation." (noting that causation can be inferred from timing alone.); See also, e.g. *Miller*  
4 *v. Fairchild Indus.* (9<sup>th</sup> Cir. 1989) 885 F. 2d 498, 505.

5 Once plaintiff has established a prima facie case, the employer must then articulate  
6 a legitimate, nonretaliatory reason for each of the adverse employment actions taken. If  
7 the defendant is able to do so, then the plaintiff must prove the employer's reason is a  
8 pretext. *Stegall v. Citadel Broadcasting Co.* (9th Cir. 2003) 350 F.3d 1061, 1065; *Flait v.*  
9 *North American Watch Corp.* (1992) 3 Cal.App.4th 467, 475-476.

11 Here, plaintiff engaged in the activities of whistleblowing and reporting and  
12 protesting discrimination in the workplace, which activities are protected activities under  
13 *Labor Code* Section 1102.5 and FEHA. Within a short time of engaging in such protected  
14 activities plaintiff was demoted from the rank of Deputy Chief to Captain, and has  
15 subsequently been placed on administrative leave, based upon alleged reason that  
16 plaintiff had engaged in improprieties, including that plaintiff had improperly interfered in  
17 and attempted to influence an internal affairs investigation. Plaintiff contends that this  
18 alleged reason is false and a sham, and is simply a pretext for retaliating against plaintiff  
19 based upon his engaging in the protected activities enumerated above. It is well settled  
20 that evidence of dishonest reasons for adverse employment actions proffered by the  
21 employer permits a finding of prohibited motive, bias, or intent. *Reeves v. Sanderson*  
22 *Plumbing Products, Inc.* (2000) 530 U.S. 133, 148- 149, 120 S. Ct. 2097, 2109; *St. Mary's*  
23 *Honor Center v. Hicks* (1993) 509 U.S. 502, 511, 518, 113 S. Ct. at pp. 2749-2750, 2753.

26 Pretext, like a prima facie showing of causation, may be inferred from the timing of  
27 the company's termination decision, by the identity of the person making the decision, and  
28

1 by the terminated employee's job performance before termination. *Sada v. Robert F.*  
2 *Kennedy Medical Center* (1997) 56 Cal.App.4th 138, 156 - 157; *Flait v. North American*  
3 *Watch Co., supra*, 3 Cal.App.4th at 478 - 479; see also, *Miller v. Fairchild Industries, Inc.*,  
4 885 F.2d 498, 505-06 (9<sup>th</sup> Cir. 1989). These factors support an inference that defendant's  
5 stated reason for taking adverse employment actions against plaintiffs were merely a  
6 subterfuge for its retaliatory conduct. See, *Sada v. Robert F. Kennedy Medical Center*,  
7 *supra*, 56 Cal.App.4th at 156; *Flait v. North American Watch Co., supra*, 3 Cal.App.4th at  
8 480 ("Viewing the evidence in the light most favorable to [the plaintiff], a reasonable trier  
9 of fact could conclude that [the defendant's] articulated reasons for terminating [the  
10 plaintiff's] employment are not worthy of credence").

11  
12 As such, the information and documents sought by this motion are directly relevant  
13 and discoverable in regard to the defendant's alleged reason for the adverse employment  
14 actions taken against plaintiff, and are directly relevant and discoverable in regard to  
15 plaintiff establishing that the defendant's proffered reason is false and pretextual.  
16

17 **II. THE INFORMATION AND DOCUMENTS REQUESTED ARE NOT PRIVILEGED**  
18 **UNDER EVIDENCE CODE SECTION 1040, ET SEQ.**

19 Defendant vaguely claims that the "witness information and documents gathered or  
20 generated during the investigation into alleged improprieties by plaintiff, which is ongoing  
21 and as such remains confidential and privileged". However, during the meet and confer  
22 process in regard to this motion, defendant cited only a single case, *County of Orange v.*  
23 *Superior Court* (2000) 79 Cal.App.4th 759, in support of its position that the information  
24 and documents sought are confidential. The *County of Orange* case is readily  
25 distinguishable, and does not support defendant withholding the information and  
26 documents sought under the facts of this case.  
27

28 In the *County of Orange* case, the plaintiffs sought to obtain the files regarding an

1 on-going criminal homicide investigation regarding the murder of a two year old boy in  
2 which the plaintiffs had been identified as two of the primary suspects. The court held as  
3 follows:

4 **"We conclude on the record before us that the public interest in solving C. T.**  
5 **Turner's homicide and bringing the perpetrator(s) to justice outweighed the**  
6 **Wus' interest in obtaining the discovery sought, at least at the time this**  
7 **matter was considered below.** We recognize the rather arbitrary nature of this  
8 **conclusion, but the order we review was made less than a year after this civil action**  
9 **was filed. (And it is still less than three years since it was filed.) When one reflects**  
10 **that the lives of other children may be at risk with the killer(s) still at large,**  
11 **the important interests in vindicating wronged plaintiffs and clearing dockets**  
12 **do not seem quite so important.** Consequently, we find the superior court abused  
13 its discretion in ordering production of the investigative file to the Wus' attorney.  
14 And, parenthetically, we think that most reasonable parents in the Wus' position  
15 would concur that the interest in apprehending a child's killer must continue to take  
16 priority over any civil action of theirs. 79 Cal.App.4th 759, 767 - 768.

17 Here, there is no unsolved homicide of a child that is being investigated by the  
18 defendant in which plaintiff is a suspect. Indeed, there is no criminal investigation of any  
19 kind being conducted by the defendant in which plaintiff is a suspect. At best, defendant  
20 claims to be investigating alleged violations of its own internal policies regarding the  
21 conducting of internal affairs investigations. Defendant cannot possibly cite to any public  
22 interest in maintaining the confidentiality of the information and documents at issue that  
23 approaches in any way the magnitude of the public interest in apprehending the murderer  
24 of a two year old boy. Indeed, exactly the opposite is true - the public interest in assuring  
25 that law enforcement officials such a plaintiff, the former Deputy Chief of the defendant's  
26 own police department, be free to report wrongdoing and discrimination by other members  
27 of his police department without fear of retaliation, clearly outweighs any alleged  
28 confidentiality interests of the defendant. Here, the public interest overwhelmingly  
supports that plaintiff be provided with all of the information and documents necessary to  
rebut defendant's specious and retaliatory claims of misconduct by plaintiff, and to protect  
plaintiff's statutory rights to report the misconduct of defendant and its employees.

1 **III. PLAINTIFF AND HIS COUNSEL SHOULD BE PROVIDED THE INTERNAL**  
2 **AFFAIRS STATEMENTS AND OTHER DOCUMENTS REGARDING THE**  
3 **INCIDENTS AT ISSUE IN ORDER TO REBUT DEFENDANT'S ALLEGED**  
4 **REASON FOR TAKING ADVERSE ACTIONS AGAINST PLAINTIFF, TO**  
5 **PREPARE FOR DEPOSITIONS AND TRIAL, AND TO BE ABLE TO IMPEACH**  
6 **THE TESTIMONY AND REFRESH THE RECOLLECTIONS OF WITNESSES, AS**  
7 **HAS BEEN SPECIFICALLY FOUND PROPER IN THE HAGGERTY V.**  
8 **SUPERIOR COURT CASE**

9 In *Haggerty v. Superior Court* (2004) 117 Cal.App.4<sup>th</sup> 1079, 1089, the court  
10 specifically held that disclosure pursuant to the Pitchess procedure of internal affairs  
11 investigation reports and other investigative materials regarding the incident at issue in the  
12 civil case against a deputy sheriff, including internal affairs interviews, transcripts, and  
13 other data, was proper. Here, similarly, the Court should order the production of all  
14 relevant reports, investigative materials, interviews, transcripts, and other data regarding  
15 the investigation and disposition of any complaints of misconduct allegedly involving  
16 plaintiff.

17 Here, as in *Haggerty v. Superior Court, supra*, 17 Cal.App. 4<sup>th</sup> at 1089 - 1091, the  
18 facts gleaned from the internal investigations at issue are directly relevant to the matters  
19 at issue in the lawsuit. Moreover, as in *Haggerty*, the requested discovery is important,  
20 not only for determining the events that occurred during the incidents, but also for  
21 plaintiff's counsel to prepare effective cross-examination of defense witnesses, including  
22 to impeach witnesses whose testimony at trial differs from statements made to the  
23 investigating officers and/or to refresh the recollections of these witnesses. (See *People v.*  
24 *Hustead* (1999) 74 Cal.App.4<sup>th</sup> 410, 417; see also, *People v. Memro, supra*, 38 Cal.3d at  
25 677 ["one legitimate goal of [*Pitchess*] discovery is to obtain information 'for possible use  
26 to impeach or cross-examine an adverse witness.] See also, *Garden Grove Police*  
27 *Department v. Superior Court, supra*, 89 Cal. App. 4<sup>th</sup> at 433.

28 Plaintiff is therefore entitled to the requested information not only to use as

1 substantive evidence to establish that defendant's alleged reasons for the adverse  
2 employment actions at issue are pretextual, but also to use to impeach the testimony  
3 and/or refresh the recollections of defense and other witnesses. As in *Haggerty*, the  
4 investigations at issue concern the very incidents that are the subject of the civil claim.  
5 Additionally, as in *Haggerty*, the privacy concerns of defendant and its employees are  
6 diminished because they are the persons and/or entities whose conduct is at issue in the  
7 litigation, and the requested internal investigation records concern their actions that are  
8 alleged to be wrongful and will be fully litigated at trial.

9  
10 Because of the direct relevance of the information, courts have recognized that the  
11 law enforcement records of the investigations of the matters at issue in the case are  
12 discoverable and have never imposed any special limitations on this disclosure if the  
13 requested discovery otherwise meets the statutory criteria. (See *Robinson v. Superior*  
14 *Court* (1978) 76 Cal.App.3d 968, 978 - "[a]ll statements made by percipient witnesses  
15 and witnesses ... related to the incident in question ... are discoverable under the  
16 standards set forth in *Pitchess*" ; see also *People v. Alexander* (1983) 140 Cal.App.3d  
17 647, 659, disapproved on another point in *People v. Swain* (1996) 12 Cal.4th 593.

18  
19 Further, the *Haggerty* court also rejected the contention that the disclosure of  
20 relevant internal affairs records would have a chilling effect on every law enforcement  
21 agency's ability to conduct an uninhibited, thorough and candid analysis of a complaint,  
22 finding such concerns speculative. The court noted that the question of whether police  
23 investigation records are discoverable has been unequivocally answered in the  
24 affirmative by the Legislature in enacting the *Pitchess* statutory scheme, and that the  
25 *Pitchess* "legislation was intended to balance the need of criminal defendants [and civil  
26 litigants] to relevant information and the legitimate concerns for confidentiality of police  
27  
28

1 personnel records." *People v. Breaux* (1991) 1 Cal.4th 281, 312. The court held that in  
2 balancing these interests, the Legislature made a decision that relevant evidence  
3 contained in a personnel file, including internal investigation records and reports, should  
4 be disclosed upon a proper showing of materiality and relevance, and did not provide any  
5 blanket exceptions to the discoverability of such reports, particularly in the civil context.  
6  
7 *Haggerty v. Superior Court, supra*, 17 Cal.App. 4<sup>th</sup> at 1091 - 1092.

8 Here, a plausible foundation exists to conclude that plaintiff was subjected to  
9 retaliation by defendant for engaging in activities protected by *Labor Code* Section 1102.5  
10 and FEHA. The information and documents sought are directly relevant and material to  
11 plaintiff's contentions that the reason given for the retaliatory actions by defendant are  
12 false, a sham, and simply a pretext for retaliation. Indeed, defendant and its counsel have  
13 conceded that such information and documents are relevant by repeatedly referencing  
14 same throughout defendant's sworn discovery responses in this matter. As such, the  
15 records pertaining to the investigations by defendant of the allegations made against  
16 plaintiff are relevant and material. The information and documents sought should be  
17 disclosed to plaintiff. In the alternative, such information and documents should be  
18 examined by the court *in camera*, and all evidence relevant to plaintiff's claims should be  
19 turned over to plaintiff's counsel.  
20

21  
22 **IV. THE INFORMATION AND DOCUMENTS REQUESTED ARE NOT PRIVILEGED**  
23 **UNDER THE ATTORNEY-CLIENT PRIVILEGE OR THE ATTORNEY WORK**  
24 **PRODUCT DOCTRINE**

25 An employer waives the attorney-client and attorney work product privileges  
26 regarding the contents of an investigation by raising the fact of the investigation as a  
27 defense. *Wellpoint Health Networks, Inc. v. Sup.Ct. (McCombs)* (1997) 59 Cal.App.4th  
28 110, 122-124, 128 - defendants waived attorney-client privilege regarding contents

1 investigation of plaintiff's sexual harassment claim by raising fact of investigation as  
2 defense. (See also, *McGrath v. Nassau County Health Care Corp.* (ED NY 2001) 204  
3 F.R.D. 240, 244. Where the employer relies on the investigator's report to show that it  
4 conducted an adequate investigation of charges, that report will be subject to pretrial  
5 discovery, even if the investigator was an attorney. *Wellpoint Health Networks, Inc. v.*  
6 *Sup.Ct. (McCombs)* (1997) 59 Cal.App.4th 110 - employer's pleading adequacy of its  
7 investigation as defense waives attorney-client privilege and work product doctrine;  
8 *Walker v. Contra Costa County* (ND CA 2005) 227 F.R.D. 529, 535 - pleading adequate  
9 investigation of harassment complaint as affirmative defense waived attorney-client  
10 privilege, self-evaluative privilege and attorney work product protection.  
11

12 Further, a report that simply summarizes the investigation or presents factual  
13 conclusions for management action, and does not contain confidential legal advice, is not  
14 privileged from discovery even if it was prepared by an attorney. *Wellpoint Health*  
15 *Networks, Inc. v. Sup.Ct. (McCombs)* (1997) 59 Cal.App.4th 110, 121-122.  
16

17 Here, the investigation at issue is being conducted by an investigator named  
18 James Gardiner, and not by any attorney. Defendant is specifically relying upon the  
19 information and documents generated by this investigation to support its denials and  
20 alleged defenses in this matter. As such, even if the attorney-client and/or attorney work  
21 product privileges applied to this investigation (which they do not), such privileges have  
22 been waived by defendant.  
23

24 **V. PLAINTIFF IS ENTITLED TO DISCLOSURE OF THE REQUESTED**  
25 **DOCUMENTS**

26 **A. Peace Officer Personnel Records Are Expressly Discoverable Pursuant to**  
27 **Evidence Code §1043(a) and 1045(a)**

28 *Evidence Code* §1043 and 1045(a) provide that if the personnel records and

1 information contained therein are relevant to the subject matter of the litigation, upon  
2 motion by the party seeking the records and information there is a right of access to the  
3 records of complaints, investigations of complaints, and discipline imposed as a result of  
4 such investigations.

5 *Evidence Code* §1045(a) provides as follows:

6 **“(a) Nothing in this article shall be construed to affect the right of access to  
7 records of complaints, or investigations of complaints, or discipline imposed  
8 as a result of such investigations, concerning an event or transaction in  
9 which the peace officer participated, or which he perceived, and the manner  
10 in which he performed his duties, provided that such information is relevant  
11 to the subject matter involved in the pending litigation. (Emphasis added)**

12 This subdivision is "expansive." *Fletcher v. Superior Court* (2002) 100 Cal.App.4th  
13 386, 399. In particular, "relevant information" under *Evidence Code* Section 1045 is not  
14 limited to facts that may be admissible at trial, but may include facts that could lead to the  
15 discovery of admissible evidence. *People v. Memro, supra*, 38 Cal.3d at 681-682; *People*  
16 *v. Hustead, supra*, 74 Cal.App.4th at 423.

17 Under the statutory scheme, a party seeking discovery of a peace officer's  
18 personnel records need only file a written motion describing the type of records sought,  
19 supported by "[a]ffidavits showing good cause for the discovery... , setting forth the  
20 materiality thereof to the subject matter involved in the pending litigation and stating upon  
21 reasonable belief that the governmental agency identified has the records or information  
22 from the records." (*Evidence Code* § 1043 (b)(3).) This initial burden is a "relatively  
23 relaxed standard." *City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 84.  
24 Information is material as defined by *Evidence Code* § 1043 (b)(3) if it 'will facilitate the  
25 ascertainment of the facts and a fair trial.' "[A] declaration by counsel on information and  
26 belief is sufficient to state facts to satisfy the 'materiality' component of that section." *Abatti*  
27 *v. Superior Court, supra*, 112 Cal.App.4th at 51.

1 In *Santa Cruz v. Municipal Court*, *supra*, 49 Cal.3d 88 - 89, the California Supreme  
2 Court held that personal knowledge is not required by *Evidence Code* 1043(b) and that an  
3 affidavit on information and belief is sufficient. The Court found that in the context of  
4 Pitchess motions, the Legislature had expressly considered and rejected a requirement of  
5 personal knowledge. The Court held that the legislative history, the case law background,  
6 and the statutory language all point to the same conclusion: the "materiality" component  
7 of *Evidence Code* § 1043(b) may be satisfied by affidavits based on information and  
8 belief. (49 Cal.3d at 89.)

10 In *Abatti v. Superior Court*, *supra*, 112 Cal.App.4<sup>th</sup> 39, the *Pitchess* motion  
11 contained an affidavit of counsel that related statements from other officers that the former  
12 officer had been asked to leave, and had been the subject of other complaints, and was  
13 labeled a "liability" problem for the department. *Id.* at 46-47. The court considered  
14 counsel's affidavit sufficient, even though it merely averred the contents of the counseling  
15 memos rather than stating with specificity the evidence which was contained therein. The  
16 court reasoned that to require such "specificity" in the Pitchess process would place the  
17 proponent of the motion in a "Catch-22" position of having to allege with particularity the  
18 very information he or she is seeking. *Id.* at 47, fn. 7.

20 **VI. THE INFORMATION AND DOCUMENTS SOUGHT ARE RELEVANT AND**  
21 **DISCOVERABLE, AND RELATE DIRECTLY TO DISPUTED ISSUES IN THIS**  
22 **CASE**

23 Relevance is defined by *Evidence Code* Section 210, which provides that:

24 "Relevant evidence" means evidence, including evidence relevant to the credibility  
25 of a witness or hearsay declarant, having any tendency in reason to prove or  
26 disprove any disputed fact that is of consequence to the determination of the  
27 action."

26 Relevance to the subject matter is to be broadly construed and is not limited to  
27 relevance to the narrow issues of the case. *Greyhound Corporation v. Superior Court*  
28

1 (1961) 56 Cal.2d 355, 378, 390. As set forth above, in the *Pitchess* motion context, a  
2 declaration by counsel on information and belief is sufficient to state facts to satisfy the  
3 'materiality' component of *Evidence Code* § 1043(a). *Abatti v. Superior Court* (2003) 112  
4 Cal.App.4th 39, 51; *Haggerty v. Superior Court, supra*, 17 Cal.App. 4<sup>th</sup> at 1086.

5 Here, there is a reasonable basis to conclude the internal investigation files at issue  
6 contain information that are relevant and material to the lawsuit. (See *Robinson v.*  
7 *Superior Court, supra*, 76 Cal.App.3d at 977 [noting that the relevancy of an investigation  
8 of the incident that is the basis for the lawsuit is "self-evident"]. Indeed, the records  
9 requested involve the investigations of the very matters which are the basis of defendant's  
10 alleged defenses in this matter, and are therefore directly relevant to the allegations in this  
11 case. Further, such documents, including the statements taken of witnesses during the  
12 internal investigations by defendant, are evidence relevant to the credibility of the  
13 witnesses.  
14

15  
16 It is unfair, unjust, and inequitable for defendant and its counsel to have access to  
17 this information and materials, to rely upon same in denying plaintiff's allegations, and to  
18 utilize same to prepare for deposition and trial, and to deny plaintiff's counsel access to  
19 the same information and documents. *Evidence Code* Sections 1043 and 1045 are not  
20 intended to provide public entities and law enforcement agencies with an unfair advantage  
21 in defending civil actions. A public entity cannot invoke these code sections to withhold  
22 evidence relevant to the case. *Garden Grove Police Dept. v. Superior Court* (2001) 89  
23 Cal.App.4<sup>th</sup> 430, 433, c.f. *People v. Memro* (1985) 38 Cal.3d 658, 679. As the court  
24 stated in *Gill v. Manuel* (9<sup>th</sup> Cir. 1973) 488 F.2d 799, 803, *Evidence Code* §1040 is not  
25 "intended to provide a shield behind which law enforcement personnel may seek refuge  
26 for possible wrongdoings."  
27  
28

1 **VII. Plaintiff Has Demonstrated Good Cause For The Production of the Requested**  
2 **Information and Documents**

3 The declaration submitted herewith contains facts that establish a plausible  
4 foundation to conclude that defendant engaged in retaliation against plaintiff. The conduct  
5 by plaintiff which defendant contends supports its retaliatory actions against plaintiff was  
6 the subject of one or more internal affairs investigations by the defendant. Plaintiff  
7 contends that the allegations by defendant of misconduct by plaintiff are unfounded, and  
8 the information and documents regarding defendant's investigation of such alleged  
9 misconduct will demonstrate that the allegations are specious. As such, the facts  
10 regarding these matters, which are of consequence to the determination of this action, are  
11 disputed between the parties, and the requested information, documents, and items are  
12 relevant and discoverable in regard to such disputed issues.  
13

14  
15 **FORM INTERROGATORY NO. 201.4:**

16 Was the **TERMINATION** or any other **ADVERSE EMPLOYMENT ACTIONS**  
17 referred to in Interrogatories 201.1 through 201.3 based in whole or in part on the  
18 **EMPLOYEE'S** job performance? If so, for each action:

- 19
- 20 (a) identify the **ADVERSE EMPLOYMENT ACTION**;
  - 21 (b) identify the **EMPLOYEE'S** specific job performance that played a role in that  
22 **ADVERSE EMPLOYMENT ACTION**;
  - 23 (c) identify any rules, guidelines, policies, or procedures that were used to  
24 evaluate the **EMPLOYEE'S** specific job performance;
  - 25 (d) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS**  
26 who had responsibility for evaluating the specific job performance of the  
27 **EMPLOYEE**;
  - 28

- 1 (e) state the names, ADDRESSES, and telephone numbers of all PERSONS  
2 who have knowledge of the EMPLOYEE'S specific job performance that  
3 played a role in that **ADVERSE EMPLOYMENT ACTION**; and  
4 (f) describe all warnings given with respect to the **EMPLOYEE'S** specific job  
5 performance.  
6

7  
8 **RESPONSE TO FORM INTERROGATORY NO. 201.4:**

9 City objects to this interrogatory on the grounds that it is misleading and assumes  
10 facts in listing a "demotion to Captain," as at all relevant times, plaintiff was a Captain with  
11 the Burbank Police Department, and was never demoted to that rank. Moreover, to the  
12 extent that plaintiff intends to refer to the elimination of the assignment for a Captain to  
13 serve in the capacity of a Deputy Chief, City objects that this is a misleading use of a  
14 special definition of the phrase "ADVERSE EMPLOYMENT ACTION" that conflicts with  
15 the legal definition of that term. Notwithstanding, but subject to the foregoing, City  
16 responds as follows on information and belief:  
17

18 There was no Adverse Employment Action against plaintiff, nor was plaintiff  
19 demoted to Captain.  
20

21 To the extent that this interrogatory is intended to simply ask about the elimination  
22 of the assignment for a Captain to serve in the capacity of Deputy Chief, City responds as  
23 follows:

24 (a) There was no adverse employment action.

25 (b) In May 2009, Chief of Police Tim Stehr decided to restructure the Police  
26 Department. He did not believe that there was a pressing need for the role of the  
27 Captain serving in the capacity of Deputy Chief, and Chief Stehr wanted to have  
28

1 more direct control and contact within the Department. Therefore, he eliminated the  
2 assignment of having a Captain serve in the capacity of Deputy Police Chief and re-  
3 assigned plaintiff as the Captain in command of the Investigations Division.

4           Part of Chief Stehr's decision to restructure was based upon a loss of  
5 confidence in plaintiff's ability to fulfill the tasks given to the Captain with the  
6 Deputy Chief assignment. The most serious contributing factor was that Chief  
7 Stehr had received allegations of impropriety concerning plaintiff, including that  
8 plaintiff had improperly interfered in an attempted to influence an internal  
9 investigation. As the Captain with the Deputy Chief assignment, plaintiff oversaw  
10 internal affairs investigations conducted by the Department, which oversight was  
11 not appropriate given the allegations against plaintiff.  
12

13           (c)   City personnel rules, administrative rules and regulations, civil service rules,  
14 Municipal Code, and resolutions pertaining to wages and compensation.  
15

16           (d)   Tim Stehr

17           (e)   The following witnesses were aware of the reasons for the restructuring:  
18 Plaintiff, Chief of Police Tim Stehr and his Command Staff, all members of the Department  
19 who received the Chief's Daily Bulletin on the restructuring, Elizabeth J. Gibbons, City  
20 Manager Mike Flad. **Witness information gathered or generated during the**  
21 **investigation into alleged improprieties by plaintiff, which is ongoing and as such**  
22 **remains confidential and privileged, will be provided when and if they are**  
23 **discoverable.**  
24

25           (f)   The following documents relate to the restructuring: May 14, 2009 and letter  
26 from Juli C. Scott to Elizabeth J. Gibbons and documents referred to therein; Burbank  
27 Police Daily Bulletin dated May 4, 2009; City of Burbank, Management Services Division,  
28

1 Personnel Action Forms as to plaintiff, 2007 through 2009, and other miscellaneous  
2 Human Resources, personnel and payroll documents. **Documents gathered or**  
3 **generated during the investigation into alleged improprieties by plaintiff, which is**  
4 **ongoing and as such remains confidential and privileged, will be provided when**  
5 **and if they are discoverable.** (Emphasis added.)  
6

7  
8 **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED:**

9       It is clear from defendant's response that defendant relies upon "witness  
10 information and documents gathered or generated during the investigation into alleged  
11 improprieties by plaintiff" in regard to the alleged reasons for its demotion of plaintiff from  
12 Deputy Chief to Captain. Indeed, defendant claims that the "the most serious contributing  
13 factor" relied upon by defendant in demoting plaintiff was the alleged improprieties of  
14 plaintiff which are the subject of these alleged confidential investigations. Defendant  
15 cannot have its cake and eat it too. Plaintiff is entitled to be apprised by defendant under  
16 oath of all facts, witnesses, and documents that defendant claims allegedly support its  
17 contentions in this matter so that plaintiff may rebut same and demonstrate that such  
18 alleged reasons are false, pretextual, and a sham, and that the real reason for the  
19 demotion and other adverse employment actions taken against plaintiff was retaliation by  
20 defendant for plaintiff engaging in activities protected by *Labor Code* Section 1102.5 and  
21 FEHA.  
22

23  
24       Plaintiff contends that none of the requested information and documents are  
25 confidential and protected from discovery, under Penal Code §832.7, Evidence Code  
26 §1043, the attorney-client privilege, the attorney work-product doctrine, or any other  
27 privilege. Plaintiff hereby incorporates by reference all of the authorities and argument  
28

1 regarding the relevance, discoverability, and reasons why such information and  
2 documents are not privileged as set forth above in regard to Form Interrogatory No. 201.3  
3 as though set forth here in extenso.  
4

5 **FORM INTERROGATORY NO. 216.1:**

6 Identify each denial of a material allegation and each special or affirmative defense  
7 in your **PLEADINGS** and for each:  
8

- 9 (a) state all facts upon which you base the denial or special or affirmative  
10 defense;  
11 (b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS**  
12 who have knowledge of those facts; and  
13 (c) identify all **DOCUMENTS** and all other tangible things, that support your  
14 denial or special or affirmative defense, and state the name, **ADDRESS**, and  
15 telephone number of the **PERSON** who has each **DOCUMENT**.  
16  
17

18 **RESPONSE TO FORM INTERROGATORY NO. 216.1:**

19 City objects to this interrogatory on the grounds that seeks to invade the attorney-  
20 client privilege and the attorney work product doctrine and to violate *Penal Code* §832.7  
21 and Evidence Code §1043. Notwithstanding, but subject to the foregoing, City responds  
22 as follows on information and belief:  
23

- 24 (a) Plaintiff did not complain about discrimination in the Burbank Police  
25 Department to either City Manager Mike Flad or Chief of Police Tim Stehr as alleged in  
26 the complaint, or in any other manner of which the City is aware prior to describing such  
27 allegations as underlying his FEHA and/or government tort claims for retaliation and in the  
28

1 complaint in this action. None of the actions described in plaintiff's Complaint were in  
2 retaliation for plaintiff's non-existent alleged complaints of racial discrimination in the  
3 Burbank Police Department.

4 Plaintiff was not demoted from Deputy Chief to Captain. At all relevant times,  
5 plaintiff has held the position of Captain. There is no Deputy Chief position or  
6 classification in the Burbank Police Department. The Chief of Police has been authorized  
7 to designate one of his captains to serve an assignment in the capacity of a Deputy Police  
8 Chief. Plaintiff, as a captain, served in that assigned capacity from approximately August  
9 2007 until approximately May 2009. The captain serving in the assigned capacity of  
10 Deputy Police Chief was tasked with day-to-day oversight of the Department's operations  
11 and to train and mentor new Captains. This assignment was created under a previous  
12 administration.  
13

14  
15 In May 2009, Chief of Police Tim Stehr decided to restructure the Police  
16 Department. He did not believe that there was a pressing need for the role of the  
17 Captain serving in the capacity of Deputy Chief, and he wanted to have more direct  
18 control and contact within the Department. Therefore, he eliminated the  
19 assignment of having a Captain serve in the capacity of Deputy Police Chief and re-  
20 assigned plaintiff as the Captain in command of the Investigations Division.  
21

22 Part of Chief Stehr's decision to restructure was based upon a loss of  
23 confidence in plaintiff's ability to fulfill the tasks given to the Captain with the  
24 Deputy Chief assignment. The most serious contributing factor was that Chief  
25 Stehr had received allegations of impropriety concerning plaintiff, including that  
26 plaintiff had improperly interfered in an attempted to influence an internal  
27 investigation. As the Captain with the Deputy Chief assignment, plaintiff oversaw  
28

1 internal affairs investigations conducted by the Department, which oversight was  
2 not appropriate given the allegations against plaintiff.

3 (b) Tim Stehr, Mike Flad and members of the City's Management Services  
4 Department area aware of plaintiff's failure to complain of alleged race discrimination.  
5 The following witnesses were aware of the reasons for the 2009 restructuring of the Police  
6 Department: Plaintiff, Chief of Police Tim Stehr and his Command Staff, all members of  
7 the Department who received the Chief's Daily Bulletin on the restructuring, Elizabeth J.  
8 Gibbons, City Manager Mike Flad. Also, internal affairs investigators, as well as  
9 complaining and other witnesses in internal affairs investigations may have  
10 knowledge relevant hereto, however the identity of such persons is privileged and  
11 confidential under *Penal Code* §832.7 and *Evidence Code* §1043, particularly to the  
12 extent such investigations remains ongoing.  
13

14 (c) The following documents relate to the restructuring: May 14, 2009 and letter  
15 from Juli C. Scott to Elizabeth J. Gibbons and documents referred to therein; Burbank  
16 Police Daily Bulletin dated May 4, 2009; City of Burbank, Management Services Division,  
17 Personnel Action Forms as to plaintiff, 2007 through 2009, and other miscellaneous  
18 Human Resources, personnel and payroll documents. Documents gathered or  
19 generated during the investigation into alleged improprieties by plaintiff, which is  
20 ongoing and as such remains confidential and privileged, will be provided when  
21 and if they are discoverable.  
22

23  
24 FIRST AFFIRMATIVE DEFENSE

25 (Failure to State a Cause of Action)

26 This is a legal defense.

27 SECOND AFFIRMATIVE DEFENSE  
28

(Good Faith)

(a) At all times relevant to plaintiff's claims, the City acted in good faith and dealt reasonably and fairly with plaintiff. Plaintiff did not complain about discrimination in the Burbank Police Department to either City Manager Mike Flad or Chief of Police Tim Stehr as alleged in the complaint, or in any other manner of which the City is aware prior to describing such allegations as underlying his FEHA and/or government tort claims for retaliation and in the complaint in this action. None of the actions described in plaintiff's Complaint were in retaliation for plaintiff's non-existent alleged complaints of racial discrimination in the Burbank Police Department.

Plaintiff was not demoted from Deputy Chief to Captain. At all relevant times, plaintiff had held the position of Captain. There is no Deputy Chief position or classification in the Burbank Police Department. The Chief of Police has been authorized to designate one of his captains to serve an assignment in the capacity of a Deputy Police Chief. Plaintiff, as a captain, served in that assigned capacity from approximately August 2007 until approximately May 2009. The captain serving in the assigned capacity of Deputy Police Chief was tasked with day-to-day oversight of the Department's operations and to train and mentor new Captains. This assignment was created under a previous administration.

**In May 2009, Chief of Police Tim Stehr decided to restructure the Police Department. He did not believe that there was a pressing need for the role of the Captain serving in the capacity of Deputy Chief, and Chief Stehr wanted to have more direct control and contact within the Department. Therefore, he eliminated the assignment of having a Captain serve in the capacity of Deputy Police Chief and re-assigned plaintiff as the Captain in command of the Investigations Division.**

1       Part of Chief Stehr's decision to restructure was based upon a loss of  
2 confidence in plaintiff's ability to fulfill the tasks given to the Captain with the  
3 Deputy Chief assignment. The most serious contributing factor was that Chief  
4 Stehr had received allegations of impropriety concerning plaintiff, including that  
5 plaintiff had improperly interfered in an attempted to influence an internal  
6 investigation. As the Captain with the Deputy Chief assignment, plaintiff oversaw  
7 internal affairs investigations conducted by the Department, which oversight was  
8 not appropriate given the allegations against plaintiff.

9  
10       (b) Tim Stehr, Mike Flad and members of the City's Management Services  
11 Department area aware of plaintiff's failure to complain of alleged race discrimination.  
12 The following witnesses were aware of the reasons for the 2009 restructuring of the Police  
13 Department: Plaintiff, Chief of Police Tim Stehr and his Command Staff, all members of  
14 the Department who received the Chief's Daily Bulletin on the restructuring, Elizabeth J.  
15 Gibbons, City Manager Mike Flad. Also, internal affairs investigators, as well as  
16 complaining and other witnesses in internal affairs investigations may have  
17 knowledge relevant hereto, however the identity of such persons is privileged and  
18 confidential under *Penal Code* §832.7 and *Evidence Code* §1043, particularly to the  
19 extent such investigations remains ongoing.  
20

21  
22       (c) The following documents relate to the restructuring: May 14, 2009 and letter  
23 from Juli C. Scott to Elizabeth J. Gibbons and documents referred to therein; Burbank  
24 Police Daily Bulletin dated May 4, 2009; City of Burbank, Management Services Division,  
25 Personnel Action Forms as to plaintiff, 2007 through 2009, and other miscellaneous  
26 Human Resources, personnel and payroll documents. Documents gathered or  
27 generated during the investigation into alleged improprieties by plaintiff, which is  
28

1 ongoing and as such remains confidential and privileged, will be provided when  
2 and if they are discoverable.

3 THIRD AFFIRMATIVE DEFENSE

4 (Reasonable Response)

5 (a) Plaintiff failed to utilize the internal procedures for reporting complaints of  
6 illegal discrimination and/or retaliation. The City has been unable to locate any complaints  
7 made prior to the filing of the tort and DFEH claims required as a prerequisite to this  
8 action. The City attempted to investigate these claims, but plaintiff, through his counsel,  
9 declined to interviewed. The investigations remain open. Discovery is continuing.

10  
11 (b) Tim Stehr, Mike Flad and members of the City's Management Services  
12 Department area aware of plaintiff's failure to complain of alleged race discrimination.

13  
14 (c) The letters between the City and plaintiff/his counsel reflect plaintiff's refusal  
15 to participate in an interview. These documents are in the possession of plaintiff and his  
16 counsel.

17 FOURTH AFFIRMATIVE DEFENSE

18 (Plaintiff's Negligence)

19 The damages allegedly suffered by plaintiff, if any, were directly or proximately  
20 caused by the acts, omissions, carelessness, or negligence of plaintiff. As noted above,  
21 plaintiff did not complain of discrimination and was not "demoted" to Captain. **Information**  
22 **related to allegations of improprieties by plaintiff that is part of an ongoing**  
23 **investigation protected by Penal Code §832.7 and Evidence Code §1043 will be**  
24 **provided when and if it is relevant and discoverable.** Discovery is continuing.

25 FIFTH AFFIRMATIVE DEFENSE

26 (Negligence to Third Parties)

1 The damages allegedly suffered by plaintiff, if any, were directly or proximately  
2 caused by the acts, omissions, carelessness, or negligence of plaintiff and/or third parties  
3 with whom he affiliated. As noted above, plaintiff did not complaint of discrimination and  
4 was not "demoted" to Captain. **Information related to allegations of improprieties by**  
5 **plaintiff or others that is part of an ongoing investigation protected by *Penal Code***  
6 **§832.7 and *Evidence Code* §1043 will be provided when and if it is relevant and**  
7 **discoverable.** Discovery is continuing.

9 SIXTH AFFIRMATIVE DEFENSE

10 (Exclusive Remedy of Worker's Compensation)

11 (a) This is primarily a legal defense. To the extent that plaintiff's Complaint, or  
12 any purported cause of action therein, alleges emotional or physical injury, any recovery is  
13 barred by the exclusive remedy provision of the California Workers' Compensation Act,  
14 *Labor Code* §§ 132a and 3200, et seq. Plaintiff has filed workers' compensation claims,  
15 and is currently out on medical leave. Discovery is continuing.

16 (b-c) City's Workers' compensation files and persons listed therein.

17 SEVENTH AFFIRMATIVE DEFENSE

18 (Absence of Ratification)

19 (a) No alleged acts of discrimination or other civil wrongs allegedly committed  
20 against plaintiff, if any occurred, were authorized, ratified, or approved by the City or any  
21 supervising or managing agent. Plaintiff did not complain about discrimination in the  
22 Burbank Police Department to either City Manager Mike Flad or Chief of Police Tim Stehr  
23 as alleged in the complaint, or in any other manner of which the City is aware prior to  
24 describing such allegations as underlying his FEHA and/or government tort claims for  
25 retaliation and in the complaint in this action.  
26  
27  
28

1 Moreover, plaintiff was not demoted from Deputy Chief to Captain. At all relevant  
2 times, plaintiff had held the position of Captain. There is no Deputy Chief position or  
3 classification in the Burbank Police Department. The Chief of Police has been authorized  
4 to designate one of his captains to serve an assignment in the capacity of a Deputy Police  
5 Chief. Plaintiff, as a captain, served in that assigned capacity from approximately August  
6 2007 until approximately May 2009. The captain serving in the assigned capacity of  
7 Deputy Police Chief was tasked with day-to-day oversight of the Department's operations  
8 and to train and mentor new Captains. This assignment was created under a previous  
9 administration.  
10

11 In May 2009, Chief of Police Tim Stehr decided to restructure the Police  
12 Department. He did not believe that there was a pressing need for the role of the  
13 Captain serving in the capacity of Deputy Chief, and Chief Stehr wanted to have  
14 more direct control and contact within the Department. Therefore, he eliminated the  
15 assignment of having a Captain serve in the capacity of Deputy Police Chief and re-  
16 assigned plaintiff as the Captain in command of the Investigations Division.  
17

18 Part of Chief Stehr's decision to restructure was based upon a loss of  
19 confidence in plaintiff's ability to fulfill the tasks given to the Captain with the  
20 Deputy Chief assignment. The most serious contributing factor was that Chief  
21 Stehr had received allegations of impropriety concerning plaintiff, including that  
22 plaintiff had improperly interfered in an attempted to influence an internal  
23 investigation. As the Captain with the Deputy Chief assignment, plaintiff oversaw  
24 internal affairs investigations conducted by the Department, which oversight was  
25 not appropriate given the allegations against plaintiff.  
26

27 (b) Tim Stehr, Mike Flad and members of the City's Management Services  
28

1 Department area aware of plaintiff's failure to complain of alleged race discrimination.  
2 The following witnesses were aware of the reasons for the 2009 restructuring of the Police  
3 Department: Plaintiff, Chief of Police Tim Stehr and his Command Staff, all members of  
4 the Department who received the Chief's Daily Bulletin on the restructuring, Elizabeth J.  
5 Gibbons, City Manager Mike Flad. **Also, internal affairs investigators, as well as**  
6 **complaining and other witnesses in internal affairs investigations may have**  
7 **knowledge relevant hereto, however the identity of such persons is privileged and**  
8 **confidential under Penal Code §832.7 and Evidence Code §1043, particularly to the**  
9 **extent such investigations remains ongoing.**

11 (c) The following documents relate to the restructuring: May 14, 2009 and letter  
12 from Juli C. Scott to Elizabeth J. Gibbons and documents referred to therein; Burbank  
13 Police Daily Bulletin dated May 4, 2009; City of Burbank, Management Services Division,  
14 Personnel Action Forms as to plaintiff, 2007 through 2009, and other miscellaneous  
15 Human Resources, personnel and payroll documents. **Documents gathered or**  
16 **generated during the investigation into alleged improprieties by plaintiff, which is**  
17 **ongoing and as such remains confidential and privileged, will be provided when**  
18 **and if they are discoverable.**

#### 20 EIGHTH AFFIRMATIVE DEFENSE

21 (Business Necessity)

22  
23 (a) Plaintiff did not complain about discrimination in the Burbank Police  
24 Department to either City Manager Mike Flad or Chief of Police Tim Stehr as alleged in  
25 the complaint, or in any other manner of which the City is aware prior to describing such  
26 allegations as underlying his FEHA and/or government tort claims for retaliation and in the  
27 complaint in this action.  
28

1 Moreover, plaintiff was not demoted from Deputy Chief to Captain. At all relevant  
2 times, plaintiff had held the position of Captain. There is no Deputy Chief position or  
3 classification in the Burbank Police Department. The Chief of Police has been authorized  
4 to designate one of his captains to serve an assignment in the capacity of a Deputy Police  
5 Chief. Plaintiff, as a captain, served in that assigned capacity from approximately August  
6 2007 until approximately May 2009. The captain serving in the assigned capacity of  
7 Deputy Police Chief was tasked with day-to-day oversight of the Department's operations  
8 and to train and mentor new Captains. This assignment was created under a previous  
9 administration.  
10

11 In May 2009, Chief of Police Tim Stehr decided to restructure the Police  
12 Department. He did not believe that there was a pressing need for the role of the  
13 Captain serving in the capacity of Deputy Chief, and Chief Stehr wanted to have  
14 more direct control and contact within the Department. Therefore, he eliminated the  
15 assignment of having a Captain serve in the capacity of Deputy Police Chief and re-  
16 assigned plaintiff as the Captain in command of the Investigations Division.  
17

18 Part of Chief Stehr's decision to restructure was based upon a loss of  
19 confidence in plaintiff's ability to fulfill the tasks given to the Captain with the  
20 Deputy Chief assignment. The most serious contributing factor was that Chief  
21 Stehr had received allegations of impropriety concerning plaintiff, including that  
22 plaintiff had improperly interfered in an attempted to influence an internal  
23 investigation. As the Captain with the Deputy Chief assignment, plaintiff oversaw  
24 internal affairs investigations conducted by the Department, which oversight was  
25 not appropriate given the allegations against plaintiff.  
26

27 (b) Tim Stehr, Mike Flad and members of the City's Management Services  
28

1 Department area aware of plaintiff's failure to complain of alleged race discrimination.  
2 The following witnesses were aware of the reasons for the 2009 restructuring of the Police  
3 Department: Plaintiff, Chief of Police Tim Stehr and his Command Staff, all members of  
4 the Department who received the Chief's Daily Bulletin on the restructuring, Elizabeth J.  
5 Gibbons, City Manager Mike Flad. **Also, internal affairs investigators, as well as**  
6 **complaining and other witnesses in internal affairs investigations may have**  
7 **knowledge relevant hereto, however the identity of such persons is privileged and**  
8 **confidential under *Penal Code* §832.7 and Evidence Code §1043, particularly to the**  
9 **extent such investigations remains ongoing.**

11 (c) The following documents relate to the restructuring: May 14, 2009 and letter  
12 from Juli C. Scott to Elizabeth J. Gibbons and documents referred to therein; Burbank  
13 Police Daily Bulletin dated May 4, 2009; City of Burbank, Management Services Division,  
14 Personnel Action Forms as to plaintiff, 2007 through 2009, and other miscellaneous  
15 Human Resources, personnel and payroll documents. **Documents gathered or**  
16 **generated during the investigation into alleged improprieties by plaintiff, which is**  
17 **ongoing and as such remains confidential and privileged, will be provided when**  
18 **and if they are discoverable.**

20 NINTH AFFIRMATIVE DEFENSE

21 (Manager's Privilege)

22  
23 (a) Plaintiff did not complain about discrimination in the Burbank Police  
24 Department to either City Manager Mike Flad or Chief of Police Tim Stehr as alleged in  
25 the complaint, or in any other manner of which the City is aware prior to describing such  
26 allegations as underlying his FEHA and/or government tort claims for retaliation and in the  
27 complaint in this action.  
28

1       Moreover, plaintiff was not demoted from Deputy Chief to Captain. At all relevant  
2 times, plaintiff had held the position of Captain. There is no Deputy Chief position or  
3 classification in the Burbank Police Department. The Chief of Police has been authorized  
4 to designate one of his captains to serve an assignment in the capacity of a Deputy Police  
5 Chief. Plaintiff, as a captain, served in that assigned capacity from approximately August  
6 2007 until approximately May 2009. The captain serving in the assigned capacity of  
7 Deputy Police Chief was tasked with day-to-day oversight of the Department's operations  
8 and to train and mentor new Captains. This assignment was created under a previous  
9 administration.  
10

11       **In May 2009, Chief of Police Tim Stehr decided to restructure the Police**  
12 **Department. He did not believe that there was a pressing need for the role of the**  
13 **Captain serving in the capacity of Deputy Chief, and Chief Stehr wanted to have**  
14 **more direct control and contact within the Department. Therefore, he eliminated the**  
15 **assignment of having a Captain serve in the capacity of Deputy Police Chief and re-**  
16 **assigned plaintiff as the Captain in command of the Investigations Division.**  
17

18       **Part of Chief Stehr's decision to restructure was based upon a loss of**  
19 **confidence in plaintiff's ability to fulfill the tasks given to the Captain with the**  
20 **Deputy Chief assignment. The most serious contributing factor was that Chief**  
21 **Stehr had received allegations of impropriety concerning plaintiff, including that**  
22 **plaintiff had improperly interfered in an attempted to influence an internal**  
23 **investigation. As the Captain with the Deputy Chief assignment, plaintiff oversaw**  
24 **internal affairs investigations conducted by the Department, which oversight was**  
25 **not appropriate given the allegations against plaintiff.**  
26

27       (b) Tim Stehr, Mike Flad and members of the City's Management Services  
28

1       Moreover, plaintiff was not demoted from Deputy Chief to Captain. At all relevant  
2 times, plaintiff had held the position of Captain. There is no Deputy Chief position or  
3 classification in the Burbank Police Department. The Chief of Police has been authorized  
4 to designate one of his captains to serve an assignment in the capacity of a Deputy Police  
5 Chief. Plaintiff, as a captain, served in that assigned capacity from approximately August  
6 2007 until approximately May 2009. The captain serving in the assigned capacity of  
7 Deputy Police Chief was tasked with day-to-day oversight of the Department's operations  
8 and to train and mentor new Captains. This assignment was created under a previous  
9 administration.  
10

11       **In May 2009, Chief of Police Tim Stehr decided to restructure the Police**  
12 **Department. He did not believe that there was a pressing need for the role of the**  
13 **Captain serving in the capacity of Deputy Chief, and Chief Stehr wanted to have**  
14 **more direct control and contact within the Department. Therefore, he eliminated the**  
15 **assignment of having a Captain serve in the capacity of Deputy Police Chief and re-**  
16 **assigned plaintiff as the Captain in command of the Investigations Division.**  
17

18       **Part of Chief Stehr's decision to restructure was based upon a loss of**  
19 **confidence in plaintiff's ability to fulfill the tasks given to the Captain with the**  
20 **Deputy Chief assignment. The most serious contributing factor was that Chief**  
21 **Stehr had received allegations of impropriety concerning plaintiff, including that**  
22 **plaintiff had improperly interfered in an attempted to influence an internal**  
23 **investigation. As the Captain with the Deputy Chief assignment, plaintiff oversaw**  
24 **internal affairs investigations conducted by the Department, which oversight was**  
25 **not appropriate given the allegations against plaintiff.**  
26

27       (b) Tim Stehr, Mike Flad and members of the City's Management Services  
28

1 Department area aware of plaintiff's failure to complain of alleged race discrimination.  
2 The following witnesses were aware of the reasons for the 2009 restructuring of the Police  
3 Department: Plaintiff, Chief of Police Tim Stehr and his Command Staff, all members of  
4 the Department who received the Chief's Daily Bulletin on the restructuring, Elizabeth J.  
5 Gibbons, City Manager Mike Flad. **Also, internal affairs investigators, as well as**  
6 **complaining and other witnesses in internal affairs investigations may have**  
7 **knowledge relevant hereto, however the identity of such persons is privileged and**  
8 **confidential under *Penal Code* §832.7 and Evidence Code §1043, particularly to the**  
9 **extent such investigations remains ongoing.**

11 (c) The following documents relate to the restructuring: May 14, 2009 and letter  
12 from Juli C. Scott to Elizabeth J. Gibbons and documents referred to therein; Burbank  
13 Police Daily Bulletin dated May 4, 2009; City of Burbank, Management Services Division,  
14 Personnel Action Forms as to plaintiff, 2007 through 2009, and other miscellaneous  
15 Human Resources, personnel and payroll documents. **Documents gathered or**  
16 **generated during the investigation into alleged improprieties by plaintiff, which is**  
17 **ongoing and as such remains confidential and privileged, will be provided when**  
18 **and if they are discoverable.**

20 TENTH AFFIRMATIVE DEFENSE

21 (Lack of Knowledge)

22  
23 (a) Plaintiff did not complain about discrimination in the Burbank Police  
24 Department to either City Manager Mike Flad or Chief of Police Tim Stehr as alleged in  
25 the complaint, or in any other manner of which the City is aware prior to describing such  
26 allegations as underlying his FEHA and/or government tort claims for retaliation and in the  
27 complaint in this action.  
28

1 (b) Tim Stehr, Mike Flad and members of the City's Management Services  
2 Department area aware of plaintiff's failure to complain of alleged race discrimination.

3 (c) There are no documents relating to plaintiff's non-existent alleged  
4 complaints of discrimination.

5 ELEVENTH AFFIRMATIVE DEFENSE

6 (Failure to exhaust)

7  
8 (a) Any of plaintiff's alleged claims which require exhaustion of internal,  
9 administrative, or judicial remedies before institution of suit are barred for failure to  
10 properly exhaust those internal, administrative, or judicial remedies. Plaintiff failed to  
11 bring internal complaints prior to bringing this action. Discovery is continuing.

12 (b-c) City Management Services Division custodian of records.  
13 discrimination.

14 TWELFTH AFFIRMATIVE DEFENSE

15 (Failure to mitigate)

16  
17 (a) The City has not yet conducted discovery regarding and therefore currently  
18 has no facts to support this affirmative defense. Discovery is continuing.

19 THIRTEENTH AFFIRMATIVE DEFENSE

20 (Laches)

21  
22 (a) Plaintiff did not complain about discrimination in the Burbank Police  
23 Department to either City Manager Mike Flad or Chief of Police Tim Stehr as alleged in  
24 the complaint, or in any other manner of which the City is aware prior to describing such  
25 allegations as underlying his FEHA and/or government tort claims for retaliation and in the  
26 complaint in this action.

27 (b) Tim Stehr, Mike Flad and members of the City's Management Services  
28

1 Department area aware of plaintiff's failure to complain of alleged race discrimination.

2 (c) There are no documents relating to plaintiff's non-existent alleged  
3 complaints of discrimination.

4 FOURTEENTH AFFIRMATIVE DEFENSE

5 (Unclean Hands)

6  
7 (a) Plaintiff did not complain about discrimination in the Burbank Police  
8 Department to either City Manager Mike Flad or Chief of Police Tim Stehr as alleged in  
9 the complaint, or in any other manner of which the City is aware prior to describing such  
10 allegations as underlying his FEHA and/or government tort claims for retaliation and in the  
11 complaint in this action.

12 Moreover, plaintiff was not demoted from Deputy Chief to Captain. At all relevant  
13 times, plaintiff had held the position of Captain. There is no Deputy Chief position or  
14 classification in the Burbank Police Department. The Chief of Police has been authorized  
15 to designate one of his captains to serve an assignment in the capacity of a Deputy Police  
16 Chief. Plaintiff, as a captain, served in that assigned capacity from approximately August  
17 2007 until approximately May 2009. The captain serving in the assigned capacity of  
18 Deputy Police Chief was tasked with day-to-day oversight of the Department's operations  
19 and to train and mentor new Captains. This assignment was created under a previous  
20 administration.  
21

22  
23 In May 2009, Chief of Police Tim Stehr decided to restructure the Police  
24 Department. He did not believe that there was a pressing need for the role of the  
25 Captain serving in the capacity of Deputy Chief, and Chief Stehr wanted to have  
26 more direct control and contact within the Department. Therefore, he eliminated the  
27 assignment of having a Captain serve in the capacity of Deputy Police Chief and re-  
28

1 assigned plaintiff as the Captain in command of the Investigations Division.

2 Part of Chief Stehr's decision to restructure was based upon a loss of  
3 confidence in plaintiff's ability to fulfill the tasks given to the Captain with the  
4 Deputy Chief assignment. The most serious contributing factor was that Chief  
5 Stehr had received allegations of impropriety concerning plaintiff, including that  
6 plaintiff had improperly interfered in an attempted to influence an internal  
7 investigation. As the Captain with the Deputy Chief assignment, plaintiff oversaw  
8 internal affairs investigations conducted by the Department, which oversight was  
9 not appropriate given the allegations against plaintiff.  
10

11 (b) Tim Stehr, Mike Flad and members of the City's Management Services  
12 Department area aware of plaintiff's failure to complain of alleged race discrimination.  
13 The following witnesses were aware of the reasons for the 2009 restructuring of the Police  
14 Department: Plaintiff, Chief of Police Tim Stehr and his Command Staff, all members of  
15 the Department who received the Chief's Daily Bulletin on the restructuring, Elizabeth J.  
16 Gibbons, City Manager Mike Flad. Also, internal affairs investigators, as well as  
17 complaining and other witnesses in internal affairs investigations may have  
18 knowledge relevant hereto, however the identity of such persons is privileged and  
19 confidential under *Penal Code* §832.7 and *Evidence Code* §1043, particularly to the  
20 extent such investigations remains ongoing.  
21  
22

23 (c) The following documents relate to the restructuring: May 14, 2009 and letter  
24 from Juli C. Scott to Elizabeth J. Gibbons and documents referred to therein; Burbank  
25 Police Daily Bulletin dated May 4, 2009; City of Burbank, Management Services Division,  
26 Personnel Action Forms as to plaintiff, 2007 through 2009, and other miscellaneous  
27 Human Resources, personnel and payroll documents. Documents gathered or  
28

1 generated during the investigation into alleged improprieties by plaintiff, which is  
2 ongoing and as such remains confidential and privileged, will be provided when  
3 and if they are discoverable.

4 FIFTEENTH AFFIRMATIVE DEFENSE

5 (Estoppel)

6  
7 (a) Plaintiff did not complain about discrimination in the Burbank Police  
8 Department to either City Manager Mike Flad or Chief of Police Tim Stehr as alleged in  
9 the complaint, or in any other manner of which the City is aware prior to describing such  
10 allegations as underlying his FEHA and/or government tort claims for retaliation and in the  
11 complaint in this action.

12 Moreover, plaintiff was not demoted from Deputy Chief to Captain. At all relevant  
13 times, plaintiff had held the position of Captain. There is no Deputy Chief position or  
14 classification in the Burbank Police Department. The Chief of Police has been authorized  
15 to designate one of his captains to serve an assignment in the capacity of a Deputy Police  
16 Chief. Plaintiff, as a captain, served in that assigned capacity from approximately August  
17 2007 until approximately May 2009. The captain serving in the assigned capacity of  
18 Deputy Police Chief was tasked with day-to-day oversight of the Department's operations  
19 and to train and mentor new Captains. This assignment was created under a previous  
20 administration.  
21

22  
23 In May 2009, Chief of Police Tim Stehr decided to restructure the Police  
24 Department. He did not believe that there was a pressing need for the role of the  
25 Captain serving in the capacity of Deputy Chief, and Chief Stehr wanted to have  
26 more direct control and contact within the Department. Therefore, he eliminated the  
27 assignment of having a Captain serve in the capacity of Deputy Police Chief and re-  
28

1 assigned plaintiff as the Captain in command of the Investigations Division.

2 Part of Chief Stehr's decision to restructure was based upon a loss of  
3 confidence in plaintiff's ability to fulfill the tasks given to the Captain with the  
4 Deputy Chief assignment. The most serious contributing factor was that Chief  
5 Stehr had received allegations of impropriety concerning plaintiff, including that  
6 plaintiff had improperly interfered in an attempted to influence an internal  
7 investigation. As the Captain with the Deputy Chief assignment, plaintiff oversaw  
8 internal affairs investigations conducted by the Department, which oversight was  
9 not appropriate given the allegations against plaintiff.  
10

11 (b) Tim Stehr, Mike Flad and members of the City's Management Services  
12 Department area aware of plaintiff's failure to complain of alleged race discrimination.  
13 The following witnesses were aware of the reasons for the 2009 restructuring of the Police  
14 Department: Plaintiff, Chief of Police Tim Stehr and his Command Staff, all members of  
15 the Department who received the Chief's Daily Bulletin on the restructuring, Elizabeth J.  
16 Gibbons, City Manager Mike Flad. Also, internal affairs investigators, as well as  
17 complaining and other witnesses in internal affairs investigations may have  
18 knowledge relevant hereto, however the identity of such persons is privileged and  
19 confidential under *Penal Code* §832.7 and *Evidence Code* §1043, particularly to the  
20 extent such investigations remains ongoing.  
21  
22

23 (c) The following documents relate to the restructuring: May 14, 2009 and letter  
24 from Juli C. Scott to Elizabeth J. Gibbons and documents referred to therein; Burbank  
25 Police Daily Bulletin dated May 4, 2009; City of Burbank, Management Services Division,  
26 Personnel Action Forms as to plaintiff, 2007 through 2009, and other miscellaneous  
27 Human Resources, personnel and payroll documents. Documents gathered or  
28

1 generated during the investigation into alleged improprieties by plaintiff, which is  
2 ongoing and as such remains confidential and privileged, will be provided when  
3 and if they are discoverable.

4 SIXTEENTH AFFIRMATIVE DEFENSE

5 (Res Judicata and Collateral Estoppel)

6 (a) The City currently has no facts to support this affirmative defense.  
7  
8 Discovery is continuing.

9 SEVENTEENTH AFFIRMATIVE DEFENSE

10 (After-Acquired Evidence)

11 (a)-(c) Any facts, witnesses, or documents pertaining to this defense are part of an  
12 ongoing internal investigation which is protected under *Penal Code* §832.7 and *Evidence*  
13 *Code* §1043.

14 EIGHTEENTH AFFIRMATIVE DEFENSE

15 (Statute of Limitations)

16 (a) Some or all of plaintiff's claims are barred by the applicable statute of  
17 limitations, California Code of Civil Procedure §335.1 and California Government Code §§  
18 911.2, 12960, 12965. Some of the actions/events raised in pleadings in this action  
19 occurred more than one year before plaintiff filed his DFEH Charge and government tort  
20 claim. Discovery is continuing.

21 NINETEENTH AFFIRMATIVE DEFENSE

22 (Privilege and Immunities)

23 This is a legal claim made in defense to certain kinds of causes of action.

24 TWENTIETH AFFIRMATIVE DEFENSE

25 (Additional Defenses)

1 This is a legal reservation of rights for further defenses as the become apparent.  
2 Discovery is continuing. (Emphasis added.)  
3

4 **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED:**


5 It is clear from defendant's response that defendant relies upon "witness  
6 information and documents gathered or generated during the investigation into alleged  
7 improprieties by plaintiff" in regard to the alleged reasons for its demotion of plaintiff from  
8 Deputy Chief to Captain. Indeed, defendant claims that the "the most serious contributing  
9 factor" relied upon by defendant in demoting plaintiff was the alleged improprieties of  
10 plaintiff which are the subject of these alleged confidential investigations. Defendant  
11 cannot have its cake and eat it too. Plaintiff is entitled to be apprised by defendant under  
12 oath of all facts, witnesses, and documents that defendant claims allegedly support its  
13 contentions in this matter so that plaintiff may rebut same and demonstrate that such  
14 alleged reasons are false, pretextual, and a sham, and that the real reason for the  
15 demotion and other adverse employment actions taken against plaintiff was retaliation by  
16 defendant for plaintiff engaging in activities protected by *Labor Code* Section 1102.5 and  
17 FEHA.  
18

19  
20 Plaintiff contends that none of the requested information and documents are  
21 confidential and protected from discovery, under Penal Code §832.7, Evidence Code  
22 §1043, the attorney-client privilege, the attorney work-product doctrine, or any other  
23 privilege. Plaintiff hereby incorporates by reference all of the authorities and argument  
24 regarding the relevance, discoverability, and reasons why such information and  
25 documents are not privileged as set forth above in regard to Form Interrogatory No. 201.3  
26 as though set forth here in extenso.  
27  
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DATED: 3/4/10

By:



GREGORY W. SMITH  
CHRISTOPHER BRIZZOLARA  
Attorneys for Plaintiff  
WILLIAM TAYLOR

PROOF OF SERVICE

STATE OF CALIFORNIA )  
 )  
COUNTY OF LOS ANGELES )

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years of age, and am not a party to the within action; my business address is 6300 Canoga Avenue, Suite 1590, Woodland Hills, California 91367.

On the date hereinbelow specified, I served the foregoing document, described as set forth below on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes, at Woodland Hills, addressed as follows:

DATE OF SERVICE : March 5, 2010

DOCUMENT SERVED : **SEPARATE STATEMENT OF FORM  
INTERROGATORIES-EMPLOYMENT LAW AND  
RESPONSES IN DISPUTE**

PARTIES SERVED : **SEE ATTACHED SERVICE LIST.**

XXX (BY REGULAR MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Woodland Hills, California. I am "readily familiar" with firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

XXX (BY ELECTRONIC MAIL) I caused such document to be electronically mailed to **Christopher Brizzolara, Esq.** at the following e-mail address: samurai@adelphia.net.

XXX (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

— (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

EXECUTED at Woodland Hills, California on March 5, 2010.

\_\_\_\_\_  
Selma I. Francia

**SERVICE LIST**

**WILLIAM TAYLOR v. CITY OF BURBANK**  
**LOS ANGELES COUNTY SUPERIOR COURT CASE NO. BC 422 252**

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Attention: Chief's Office  
Burbank Police Department  
200 N. Third Street  
Burbank, California 91502